

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BP LUBRICANTS, USA, INC.,

Plaintiff,

v.

PRO-FORMANCE LUBE CENTER,
INC.,

Defendant.

NO: CV-10-388-RMP

ORDER DENYING MOTION FOR
TRANSFER OF VENUE

Before the Court, without oral argument, is the motion for change of venue, **ECF No. 12**, brought by Defendants Pro-Formance Lube Center, Inc. (“Pro-Formance”), Mangus, LLC (“Mangus”), and David and Teresa Stewart (“Stewarts”) for an order transferring venue in this diversity action to the District of Idaho pursuant to 28 U.S.C. § 1404(a). The Court has reviewed the motion, ECF No. 12, and accompanying memorandum, ECF No. 13, Plaintiff’s response, ECF No. 15, and declaration and exhibits in opposition, ECF No. 16, Defendants’ reply, ECF No. 21, and the remaining record in this matter. Fully informed, the

ORDER DENYING MOTION FOR TRANSFER OF VENUE ~ 1

1 Court denies the Defendants' motion and declines to change venue to the District
2 of Idaho.

3 **BACKGROUND**

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5 Plaintiff BP Lubricants USA, Inc. ("BP"), formerly known as Castrol North
6 America, was previously sued by Defendant Pro-Formance, an Idaho corporation,
7 in the District of Idaho. BP, a Delaware corporation, obtained a judgment in that
8 matter in January 2010 for BP's attorneys' fees and costs, \$139,884.80. In March
9 2010, BP domesticated the judgment in Spokane County, Washington, because
10 Pro-Formance's assets, specifically, four quick lube stations, are located in the
11 Spokane area.
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14 Pro-Formance's president is David Stewart and secretary and treasurer is
15 Teresa Stewart. Both Stewarts are Idaho residents and sole shareholders of Pro-
16 Formance. After entry of the judgment, Pro-Formance executed a contract for sale
17 of its assets to Mangus, an Idaho company. The contract for sale, executed in
18 Idaho, lists David Stewart as "Managing Member" and Teresa Stewart as
19 "Member" of Mangus.
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22 Unable to collect on its judgment after the transfer of assets, BP sued Pro-
23 Formance, Mangus, and the Stewarts in this District, alleging that the transfer of
24 assets to Mangus violated Washington's Uniform Fraudulent Transfer Act. ECF
25 No. 1. Defendants disputed whether venue is valid in the Eastern District of
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1 Washington in their answer, ECF No. 7, and in the parties' joint status report, ECF
2 No. 9, and again raise their allegations regarding improper venue in their briefing
3 in support of the present motion. However, Defendants have not filed a motion to
4 dismiss.
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8 This Court exercises jurisdiction over this diversity action pursuant to 28
9 U.S.C. § 1332.

10 ANALYSIS

11 Propriety of Venue and Personal Jurisdiction in the Eastern District of 12 Washington 13

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15 Although the Defendants have not brought a motion to dismiss or transfer
16 under either Fed. R. Civ. P. 12(b)(3) or 28 U.S.C. § 1406, the Court first analyzes
17 whether venue is proper in the Eastern District of Washington. The only basis for
18 federal subject matter jurisdiction in this case is diversity of citizenship, so the
19 applicable venue statute is 28 U.S.C. § 1391(a), which provides:
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22 A civil action wherein jurisdiction is founded only on diversity of
23 citizenship may, except as otherwise provided by law, be brought only
24 in (1) a judicial district where any defendant resides, if all defendants
25 reside in the same State, (2) a judicial district in which a substantial
26 part of the events or omissions giving rise to the claim occurred, or a
27 substantial part of property that is the subject of the action is situated,
28 or (3) a judicial district in which any defendant is subject to personal
jurisdiction at the time the action is commenced, if there is no district
in which the action may otherwise be brought.

1 28 U.S.C. § 1391(a).

2 For venue to lie in this District, any of the Defendants must reside here, if all
3 of the defendants reside in the same State, or a “substantial part of the events or
4 omissions giving rise to the claim” must have occurred here, or “a substantial part
5 of property that is the subject of the action” must be situated here. 28 U.S.C. §
6 1391(a). .
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9 Defendants rely on a Seventh Circuit case, *Musicus v. Safeway Stores, Inc.*,
10 743 F.2d 503 (7th Cir. 1984), to argue that in a suit involving property that the
11 standard for determining proper venue is whether the action may be characterized
12 as “local” or “transitory” in nature and that, here, the Plaintiff’s fraudulent transfer
13 claim is “transitory.” However, the *Musicus* case, apart from being from a
14 different circuit, interpreted an earlier version of the venue statute, 28 U.S.C. §
15 1391(a), before a 1990 amendment of § 1391 that replaced the old venue statement
16 in subsection (a) with an altogether new statement, recited above.
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20 Venue lies in this District pursuant to § 1391(a)(2), which allows for venue
21 in a judicial district in which a substantial part of the events or omissions giving
22 rise to the claim occurred or where a substantial part of property that is the subject
23 of the action is situated. The assets relevant to BP’s claims are located in this
24 District. *See* ECF No. 18. The judgment debt to BP is located in this District
25 given that the judgment was domesticated in Spokane County. BP seeks relief, in
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1 part, in the form of execution on any assets fraudulently transferred or the proceeds
2 of such assets. ECF No. 1 at 9. Again, those assets are in Eastern Washington.

3 The Court disagrees with Defendants' argument that a transfer of assets
4 occurs wholly in the state in which a contract transferring those assets is executed
5 when the transferred assets themselves are real property located in a different state.
6 For instance, obligations imposed by the transfer agreements with regard to
7 assignments of the leases must be performed in this District.
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9 In addition to § 1391(a)(2), venue is proper under § 1391(a)(1) in a "judicial
10 district where any defendant resides, if all defendants reside in the same state."
11 Subsection (c) of § 1391, defines residency for corporate defendants more broadly
12 than residency for the purposes of diversity of citizenship. Subsection 1391(c)
13 states that for the purposes of venue, "a corporation shall be deemed to reside in
14 any judicial district in which it is subject to personal jurisdiction at the time the
15 action is commenced." 28 U.S.C. § 1391(c).
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20 To establish personal jurisdiction over an out-of-state defendant in this
21 District, Washington's long-arm statute must confer personal jurisdiction, and the
22 exercise of that jurisdiction must meet the constitutional requirements of due
23 process. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir.
24 2002). Washington's long-arm statute provides for personal jurisdiction over non-
25 residents who conduct business within the state. RCW 4.28.185(1)(a). "Where a
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1 defendant has ‘substantial’ or ‘continuous and systematic’ contacts with the forum
2 state, there is a sufficient relationship between the defendant and the state to
3 support ‘general personal jurisdiction’ even if the cause of action is unrelated to the
4 defendant’s forum activities.” *Peterson v. Kennedy*, 771 F.2d 1244, 1261 (9th Cir.
5 1985).

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8 All of the Defendants operated and/or operate multiple brick-and-mortar
9 businesses in the Spokane area. Their relationship with Washington State is
10 substantial and systematic enough to support general jurisdiction.¹ Both of the

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12 ¹ Defendants dispute by implication, but without argument or citation to legal
13 authority, whether there is personal jurisdiction over the Stewarts in this District
14 with the statement that “personal jurisdiction is, at best, questionable in
15 Washington.” ECF No. 13 at 6. The transfers at issue in this suit demonstrate that,
16 were the Court to analyze the Stewarts’ contacts with Washington individually, the
17 Court would likely find that they were exercising sufficient control of the
18 Defendant corporations to subject themselves to jurisdiction. *See Davis v. Metro*
19 *Productions, Inc.*, 885 F.2d 515, 521 (9th Cir. 1989); *Flynt Distributing Co., Inc. v.*
20 *Harvey*, 734 F.2d 1389, 1393 (9th Cir.1984); *Babbitt Electronics, Inc. v. Dynascan*
21 *Corp.*, 828 F.Supp. 944, 960 (S.D.Fla.1993), *aff’d*, 38 F.3d 1161, 1184 (11th
22 Cir.1994); *Silverlit Toys Manufactory, Ltd. v. Absolute Toy Marketing, Inc.*, 2007
23 WL 521239, *8 (N.D.Cal. 2007) (applying *Babbitt Electronics*).

1 corporate Defendants, Pro-Formance and Mangus, are subject to personal
2 jurisdiction in this District. A literal reading of § 1391(a)(1) suggests that venue
3 lies in this district on the basis that the two corporate Defendants are residents of
4 this District under § 1391(c), and all of the Defendants reside in the same State,
5 Idaho. However, courts have interpreted “§ 1391(a)(1) as requiring the ‘district
6 where any defendant resides’ to be in the state where all defendants reside.”
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8 *Columbia Cas. Co. v. SMI Liquidating*, 2010 WL 3037242, *2 (N.D. Cal. July 30,
9 2010), citing with approval *Dashman v. Peter Letterese & Assocs.*, 999 F.Supp.
10 553, 555 (S.D.N.Y. 1998) (“Section 1391(a)(1) cannot be read, however, to mean
11 that as long as all defendants reside in the same state, venue is proper in a district
12 in some other state where any corporate defendant happens to be subject to
13 personal jurisdiction. The language of § 1391(a)(1) contemplates venue in a
14 judicial district within the state in which all defendants reside.”); *see also Jorgens*
15 *v. P & V, Inc.*, 2007 WL 840309 (E.D.Cal. March 16, 2007); Jonathan Siegel,
16 *What Statutory Drafting Errors can Teach Us About Statutory Interpretation*, 69
17 GEO. WASH. L. REV. 309. 318 (2001) (“The whole point of § 1391(a)(1) would, in
18 fact, be utterly thwarted if it could be transformed from a statute providing that
19 defendants could be sued in judicial districts reasonably near their homes to a
20 statute permitting a clever plaintiff’s counsel to drag defendants clear across the
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1 country when they have the misfortune to have a corporation as a codefendant”).

2 In light of the widespread rejection of a literal interpretation of § 1391(a)(1), the
3 Court declines to find venue proper on this additional ground.
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5 Weighing of the Considerations for Transfer of Venue

6 Defendants bring their motion pursuant to 28 U.S.C. § 1404(a), which
7 provides: “For the convenience of the parties and witnesses, in the interest of
8 justice, a district court may transfer any civil action to any other district or division
9 where it might have been brought.” A district deciding whether to exercise its
10 discretion to transfer considers: (1) the convenience of the parties; (2) convenience
11 of the witnesses; and (3) the interest of justice. *Stewart Org., Inc. v. Ricoh Corp.*,
12 487 U.S. 22, 31 (1988). The Ninth Circuit has identified several additional factors
13 that a court may consider in deciding a motion to change venue pursuant to
14 § 1404(a):
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19 (1) the location where the relevant agreements were negotiated and
20 executed, (2) the state that is most familiar with the governing law, (3)
21 the plaintiff's choice of forum, (4) the respective parties' contacts with
22 the forum, (5) the contacts relating to the plaintiff's cause of action in
23 the chosen forum, (6) the differences in the costs of litigation in the
24 two forums, (7) the availability of compulsory process to compel
25 attendance of unwilling non-party witnesses, and (8) the ease of
26 access to sources of proof.

27 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).
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1 The § 1404(a) analysis is conducted on an “individualized, case-by-case
2 consideration of convenience and fairness.” *Van Dusen v. Barrack*, 376 U.S. 612,
3 622 (1964). A defendant seeking transfer of venue bears the burden of showing
4 that the convenience of the parties and witnesses and the interests of justice require
5 transfer to another district. *Commodity Futures Trading Comm’n v. Savage*, 611
6 F.2d 270, 279 (9th Cir. 1979). The defendant must make a strong showing of
7 inconvenience to warrant upsetting the plaintiff’s choice of forum. *Decker Coal v.*
8 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir.1986). When a
9 discretionary venue transfer would only shift the inconvenience from defendant to
10 plaintiff, the motion to transfer should be denied. *Gherebi v. Bush*, 352 F.3d 1278,
11 1302-03 (9th Cir. 2003), vacated on other grounds by *Bush v. Gherebi*, 542 U.S.
12 952 (2004). “[A]s a general matter, the district court is not required to determine
13 the best venue, and transfer under § 1404(a) should not be freely granted.”
14 *Gherebi*, 352 F.3d at 1303 (internal citations and quotations omitted).

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21 As to the convenience of the parties, litigation in the Eastern District of
22 Washington would be minimally inconvenient for the Stewarts, who reside in
23 Coeur d’Alene, Idaho, only 34 miles from the Eastern District of Washington’s
24 courthouse in Spokane. BP is not a Washington or Idaho corporation. However,
25 BP chose to file their suit in the Eastern District of Washington and, accordingly,
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1 hired attorneys licensed to practice in Washington to litigate the matter. These
2 competing considerations render this factor neutral.

3 Likewise, the convenience of the witnesses does not weigh in favor of
4 transferring venue to the District of Idaho, as the only witnesses discussed in the
5 pleadings are the Stewarts, who are Defendants in this matter and who reside in
6 Coeur d'Alene, Idaho. *See* ECF No. 18 at 9.
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9 Finally, the Court considers the factors enumerated by the Ninth Circuit to
10 weigh transfer on the basis of "the interest of justice." *See Stewart Org., Inc.*, 487
11 U.S. at 31; *Jones*, 211 F.3d at 498-99. The Court finds that the first factor weighs
12 in Defendants' favor, as the agreements at issue were executed in Idaho. As to the
13 second factor, although Defendants argue that both Washington and Idaho have
14 adopted the Uniform Fraudulent Transfer Act, a District of Idaho court would be
15 called upon to apply the Washington statute and rely on Washington state cases
16 interpreting that statute if this case were to be transferred. The Court finds that
17 either district may apply the Washington statute with equal understanding.
18 Defendants concede that the third and fourth factors also weigh in favor of
19 Plaintiffs.
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22 The sixth and seventh factors are, according to the parties' briefing, neutral.
23 The eighth factor may weigh slightly in favor of the Defendants if the Court
24 considers the location of the corporate headquarters, and the paperwork it contains,
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1 and the fact that the case that resulted in the adverse judgment was adjudicated in
2 the District of Idaho. However, again, Defendants have not persuaded the Court
3 that the location of potential sources of proof in this matter being in Idaho places a
4 heavy burden on Defendants.
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6 On the whole, the Court finds that the balance of the factors weighs in favor
7 of Plaintiff, which necessitates against transferring venue. *Gherebi*, 352 F.3d at
8 1303,
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10 **IT IS HEREBY ORDERED** that the Defendants' Motion to Transfer
11 Venue, **ECF No. 12**, is **DENIED**.
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13 The District Court Executive is hereby directed to enter this Order and
14 furnish copies to counsel.
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16 **DATED** this 10th day of May, 2011.
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18 *s/ Rosanna Malouf Peterson*
19 ROSANNA MALOUF PETERSON
20 Chief United States District Court Judge
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